

**MICHIGAN PUBLIC SERVICE COMMISSION (EXCERPT)**  
**Act 3 of 1939**

**460.10a Alternative electric suppliers; orders establishing rates, terms, and conditions of service; licensing procedure; switching or billing for services without consent; self-service power; affiliate wheeling; rights of parties to existing contracts and agreements; receipt of standard tariff service; recovery of costs by electric utility offering retail open access service; definitions.**

Sec. 10a.

(1) The commission shall issue orders establishing the rates, terms, and conditions of service that allow retail customers to take service from an alternative electric supplier. The orders shall do all of the following:

(a) Except as otherwise provided in this section, provide that no more than 10% of an electric utility's average weather-adjusted retail sales for the preceding calendar year may take service from an alternative electric supplier at any time.

(b) Set forth procedures necessary to allocate the amount of load that will be allowed to be served by alternative electric suppliers, through the use of annual energy allotments awarded on a calendar year basis. If the sales of a utility are less in a subsequent year or if the energy usage of a customer receiving electric service from an alternative electric supplier exceeds its annual energy allotment for that facility, that customer shall not be forced to purchase electricity from a utility, but may purchase electricity from an alternative electric supplier for that facility during that calendar year.

(c) Notwithstanding any other provision of this section, provide that, if the commission determines that less than 10% of an electric utility's average weather-adjusted retail sales for the preceding calendar year is taking service from alternative electric suppliers, the commission shall set as a cap on the weather-adjusted retail sales that may take service from an alternative electric supplier, for the current calendar year and 5 subsequent calendar years, the percentage amount of weather-adjusted retail sales for the preceding calendar year rounded up to the nearest whole percentage. If the cap is not adjusted for 6 consecutive calendar years, the cap shall return to 10% in the calendar year following that sixth consecutive calendar year. If a utility that serves less than 200,000 customers in this state has not had any load served by an alternative electric supplier in the preceding 4 years, the commission shall adjust the cap in accordance with this provision for no more than 2 consecutive calendar years.

(d) Notwithstanding any other provision of this section, customers seeking to expand usage at a facility that has been continuously served through an alternative electric supplier since April 1, 2008 shall be permitted to purchase electricity from an alternative electric supplier for both the existing and any expanded load at that facility as well as any new facility constructed or acquired after October 6, 2008 that is similar in nature if the customer owns more than 50% of the new facility.

(e) Provide that for an existing facility that is receiving 100% of its electric service from an alternative electric supplier on or after the effective date of the amendatory act that added section 6t, the owner of that facility may purchase electricity from an alternative electric supplier, regardless of whether the sales exceed 10% of the servicing electric utility's average weather-adjusted retail sales, for both the existing electric choice load at that facility and any expanded load arising after the effective date of the amendatory act that added section 6t at that facility as well as any new facility that is similar in nature to the existing facility, that is constructed or acquired by the customer on a site contiguous to the existing site or on a site that would be contiguous to an existing site in the absence of an existing public right-of-way, and the customer owns more than 50% of that facility. This subdivision does not authorize or permit an existing facility being served by an electric utility on standard tariff service on the effective date of the amendatory act that added section 6t to be served by an alternative electric supplier.

(f) Notwithstanding any other provision of this section, any customer operating an iron ore mining facility, iron ore processing facility, or both, located in the Upper Peninsula of this state, may purchase all or any portion of its electricity from an alternative electric supplier, regardless of whether the sales exceed 10% of the serving electric utility's average weather-adjusted retail sales, if that customer is in compliance with the terms of a settlement agreement requiring it to facilitate construction of a new power plant located in the Upper Peninsula of this state. A customer described in this subdivision and the alternative electric supplier that provides electric service to that customer are not subject to the requirements contained in the amendatory act that added section 6t and any administrative regulations adopted under that amendatory act. The commission's orders establishing rates, terms, and conditions of retail access service issued before the effective date of the amendatory act that added section 6t remain in effect with regard to retail open access provided under this subdivision.

(g) Provide that a customer on an enrollment queue waiting to take retail open access service as of December 31, 2015 shall continue on the queue and an electric utility shall add a new customer to the queue if the customer's prospective alternative electric supplier submits an enrollment request to the electric utility. A customer shall be removed from the queue by notifying the electric utility electronically or in writing.

(h) Require each electric utility to file with the commission not later than January 15 of each year a rank-ordered

queue of all customers awaiting retail open access service under subdivision (g). The filing must include the estimated amount of electricity used by each customer awaiting retail open access service under subdivision (g). All customer-specific information contained in the filing under this subdivision is exempt from release under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and the commission shall treat that information as confidential information. The commission may release aggregated information as part of its annual report as long as individual customer information or data are not released.

(i) Provide that if the prospective alternative electric supplier of a customer next on the queue awaiting retail open access service is notified after the effective date of the amendatory act that added section 6t that less than 10% of an electric utility's average weather-adjusted retail sales for the preceding calendar year are taking service from an alternative electric supplier and that the amount of electricity needed to serve the customer's electric load is available under the 10% allocation, the customer may take service from an alternative electric supplier. The customer's prospective alternative electric supplier shall notify the electric utility within 5 business days after being notified whether the customer will take service from an alternative electric supplier. If the customer's prospective alternative electric supplier fails to notify the utility within 5 business days or if the customer chooses not to take retail open access service, the customer shall be removed from the queue of those awaiting retail open access service. The customer may subsequently be added to the queue as a new customer under the provisions of subdivision (g). A customer that elects to take service from an alternative electric supplier under this subdivision shall become service-ready under rules established by the commission and the utility's approved retail open access service tariffs.

(j) Provide that the commission shall ensure if a customer is notified that the customer's service from an alternative electric supplier will be terminated or restricted as a result of the alternative electric supplier limiting service in this state, the customer has 60 days to acquire service from a different alternative electric supplier. If the customer is a public entity, the time to acquire services from a different alternative electric supplier shall not be less than 180 days.

(k) Provide that as a condition of licensure, an alternative electric supplier meets all of the requirements of this act.

(2) The commission shall issue orders establishing a licensing procedure for all alternative electric suppliers. To ensure adequate service to customers in this state, the commission shall require that an alternative electric supplier maintain an office within this state, shall assure that an alternative electric supplier has the necessary financial, managerial, and technical capabilities, shall require that an alternative electric supplier maintain records that the commission considers necessary, and shall ensure an alternative electric supplier's accessibility to the commission, to consumers, and to electric utilities in this state. The commission also shall require alternative electric suppliers to agree that they will collect and remit to local units of government all applicable users, sales, and use taxes. An alternative electric supplier is not required to obtain any certificate, license, or authorization from the commission other than as required by this act.

(3) The commission shall issue orders to ensure that customers in this state are not switched to another supplier or billed for any services without the customer's consent.

(4) This act does not prohibit or limit the right of a person to obtain self-service power and does not impose a transition, implementation, exit fee, or any other similar charge on self-service power. A person using self-service power is not an electric supplier, electric utility, or a person conducting an electric utility business. As used in this subsection, "self-service power" means any of the following:

(a) Electricity generated and consumed at an industrial site or contiguous industrial site or single commercial establishment or single residence without the use of an electric utility's transmission and distribution system.

(b) Electricity generated primarily by the use of by-product fuels, including waste water solids, which electricity is consumed as part of a contiguous facility, with the use of an electric utility's transmission and distribution system, but only if the point or points of receipt of the power within the facility are not greater than 3 miles distant from the point of generation.

(c) A site or facility with load existing on June 5, 2000 that is divided by an inland body of water or by a public highway, road, or street but that otherwise meets this definition meets the contiguous requirement of this subdivision regardless of whether self-service power was being generated on June 5, 2000.

(d) A commercial or industrial facility or single residence that meets the requirements of subdivision (a) or (b) meets this definition whether or not the generation facility is owned by an entity different from the owner of the commercial or industrial site or single residence.

(5) This act does not prohibit or limit the right of a person to engage in affiliate wheeling and does not impose a transition, implementation, exit fee, or any other similar charge on a person engaged in affiliate wheeling.

(6) The rights of parties to existing contracts and agreements in effect as of January 1, 2000 between electric utilities and qualifying facilities, including the right to have the charges recovered from the customers of an electric utility, or its successor, are not abrogated, increased, or diminished by this act, nor shall the receipt of any proceeds of the securitization bonds by an electric utility be a basis for any regulatory disallowance. Further, any securitization or financing order issued by the commission that relates to a qualifying facility's power purchase contract shall fully consider that qualifying facility's legal and financial interests.

(7) A customer that elects to receive service from an alternative electric supplier may subsequently provide notice to the electric utility of the customer's desire to receive standard tariff service from the electric utility under procedures approved by the commission.

(8) The commission shall authorize rates that will ensure that an electric utility that offered retail open access service from 2002 through October 6, 2008 fully recovers its restructuring costs and any associated accrued regulatory assets. This includes, but is not limited to, implementation costs, stranded costs, and costs authorized under section 10d(4) as it existed before October 6, 2008, that have been authorized for recovery by the commission in orders issued before October 6, 2008. The commission shall approve surcharges that will ensure full recovery of all such costs by October 6, 2013.

(9) As used in subsections (1) and (7):

(a) "Customer" means the building or facilities served through a single existing electric billing meter and does not mean the person, corporation, partnership, association, governmental body, or other entity owning or having possession of the building or facilities.

(b) "Standard tariff service" means, for each regulated electric utility, the retail rates, terms, and conditions of service approved by the commission for service to customers who do not elect to receive generation service from alternative electric suppliers.

(10) As used in this section:

(a) "Affiliate" means a person or entity that directly, or indirectly through 1 or more intermediates, controls, is controlled by, or is under common control with another specified entity. As used in this subdivision, "control" means, whether through an ownership, beneficial, contractual, or equitable interest, the possession, directly or indirectly, of the power to direct or to cause the direction of the management or policies of a person or entity or the ownership of at least 7% of an entity either directly or indirectly.

(b) "Affiliate wheeling" means a person's use of direct access service where an electric utility delivers electricity generated at a person's industrial site to that person or that person's affiliate at a location, or general aggregated locations, within this state that was either 1 of the following:

(i) For at least 90 days during the period from January 1, 1996 to October 1, 1999, supplied by self-service power, but only to the extent of the capacity reserved or load served by self-service power during the period.

(ii) Capable of being supplied by a person's cogeneration capacity within this state that has had since January 1, 1996 a rated capacity of 15 megawatts or less, was placed in service before December 31, 1975, and has been in continuous service since that date. A person engaging in affiliate wheeling is not an electric supplier, an electric utility, or conducting an electric utility business when a person engages in affiliate wheeling.

**History:** Add. 2000, Act 141, Imd. Eff. June 5, 2000 ;-- Am. 2003, Act 214, Imd. Eff. Dec. 2, 2003 ;-- Am. 2004, Act 88, Imd. Eff. Apr. 22, 2004 ;-- Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008 ;-- Am. 2016, Act 341, Eff. Apr. 20, 2017

**Popular Name:** Customer Choice and Electricity Reliability Act